IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL Revision No.385 TO 387 OF 2005

DATE OF DECISION: FEBRUARY 08, 2007

Punjab State Cooperative Supply & Marketing Federation Limited, Chandigarh.

.....Petitioner

VERSUS

A.B.S.Spinning Orissa Limited, Bhubaneshwar and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. H. S. Bakshi, Advocate,
for the petitioner.

Mr. A. K. Jain, Advocate,
for the respondents.

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RANJIT SINGH, J.

Punjab State Cooperative Supply Marketing Federation Limited, Chandigarh, has filed three separate petitions through its Chief Manager (Law) for quashing of common impugned order dated 4.11.2004, Annexure P-1, passed by Judicial Magistrate Ist Class, Bhatinda. Since the petitions have arisen out of the same order, these are being disposed of by this common order.

Respondent Companies had issued certain post dated cheques in favour of the petitioner including Cheque Nos.0399359 to 0399368 having dated 18.11.1992 to 27.11.1992. Each cheque was for a sum of Rs.3 lacs. The petitioner had supplied cotton bales to the respondents for which these cheques

were issued. The cheques, when presented for realisation, were dishonoured. Accordingly, three complaints were filed when the payment was not made even after notice as required under the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act").

As disclosed in the revision petitions, the respondents had earlier filed three separate Criminal Miscellaneous Petitions on the ground that the payment of the amounts of cheques in question had been made. These petitions were disposed of with a direction that the respondents could make an application before the trial Court for the relief they have sought in the said petitions. Accordingly, the respondents had filed applications, seeking discharge, which were dismissed by the learned Magistrate on 12.2.2001. However, at the time of framing of charge, the Chief Judicial Magistrate noticed that the complainant-petitioner Company had received the entire payment of the cheques and that they had even agreed to receive the payment in instalments and further that the parties had agreed to withdraw the cases relating to dishonouring of cheques. The complainant-petitioner Company now has raised a claim for interest and as such, had pressed for continuation of the complaint before the Chief Judicial Magistrate on that ground. While leaving liberty with the petitioner-Company to recover the interest from the respondents-accused, the Chief Judicial Magistrate dismissed the complaint and discharged the respondents. While doing so, the Chief Judicial Magistrate placed reliance on an order passed by this Court in Criminal Misc. Petition No.15935 M of 2004 wherein under similar circumstances, the continuation of the complaint was held to be an

abuse of the process, where the payment of the cheques had in fact been received.

Notice of motion having been issued, the counsel for the parties have appeared and are heard.

Mr.H.S.Bakshi, learned counsel for the petitioner, would submit that act of making payment would not go to absolve the respondents of their criminal liability though it may amount to discharge of their civil liability. He would further say that the order dismissing the complaint and discharge of the respondents passed by Chief Judicial Magistrate would be without jurisdiction as it would amount to review of the earlier order, whereby the prayer for discharge of the accused had been dismissed on 12.2.2001. Mr.Bakshi has also relied upon a case reported as ***Rajneesh Aggarwal Vs. Amit J. Bhalla,*** 2001 (1) RCR (Criminal) 605 to say that there is a clear distinction between civil and criminal liability. This observation made in the case of Rajneesh Aggarwal's case (supra) is entirely in different context. This was a case where the amount of the cheque was deposited during the pendency of the appeal. The respondent in this case had not agreed for a settlement on the ground that all the pending cases between the parties should be settled. No such consideration arise in the present cases. Moreover, Rajneesh Aggarwal was a case where a petition under Section 482 Cr.P.C. for quashing of the proceedings had been filed and in that context it was observed that the criminal proceedings could not be quashed on account of deposit of money in the Court.

Mr.Jain, learned counsel appearing on behalf of the respondents, however, has referred to a letter dated 24.12.1996

whereby the receipt of full amount by the petitioner had been acknowledged. The negotiations were statedly on for payment of the interest for which liberty had been left in the impugned order. The learned counsel would also place reliance on ***G.Sagar Suri Vs. State of U.P.***, 2000 (1) R.C.R. (Criminal) 707 wherein it was observed by the Hon'ble Supreme Court that a bald assertion that the cheques were issued with dishonest intention and misrepresentation is not tenable. In this case, it was further observed that the Magistrate can discharge the accused at any stage of trial if he considers the charge to be groundless and that accused could also approach the High Court under Section 482 Cr.P.C. or Article 227 of the Constitution of India for quashing of the proceedings when no offence is made out. It was further observed in G.Sagar Suri's case (supra) that it is to be seen if the matter which is essentially of a civil nature is not given a cloak of criminal offence.

It has otherwise been conceded before me by Mr.Bakshi that payment in this case has been made and realised by the petitioner concern. In fact, initially Mr.Bakshi had sought time to have instructions to the effect that he may not press these petitions in view of the negotiations between the parties for settlement of interest part as well. Obviously, the petitioner is pressing this petition only to realise the interest whereas that may not be within the scope of an offence created under Section 138 of the Act. Since the respondents have concededly discharge their entire liability arising out of dishonouring of cheques, it would not be fair to subject them to prosecution and trial for an offence under Section 138 of the Act. Doing so, in my view, would certainly be an abuse of the process of

the Court. Payment of interest, even if due, would clearly be a civil liability and if on that account proceedings are to be allowed, then it will result in giving a criminal cloak to the proceedings which are basically civil in nature. Considering these special facts of the cases, no infirmity or jurisdictional error is found in the impugned order.

In view of the above, all the three petitions are hereby dismissed.

February 08, 2007 **(RANJIT SINGH)**
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